

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 96-17
(December 12, 1996)

**Membership on Board of Nonprofit Corporation That Provides
Mental Health Services to Court**

Issues

1. Is it ethical for a judge or court administrator to serve on the board of directors of a nonprofit corporation that provides mental health services to individuals, emergency respite services and other services for children, if the company contracts to provide these services with the court on which the judge sits?

Answer: Yes, but with significant limitations.

2. Is it permissible for the judge or court administrator's spouse to serve on the board of directors or be employed by the corporation under the same circumstance?

Answer: Yes.

Discussion

Issue 1

Canon 4 of the Arizona Code of Judicial Conduct deals with a judge's extra-judicial activities. Canon 4C(4) allows a judge to sit on the board of a civic organization. The nonprofit organization involved here appears to qualify as a "civic organization." The limitations are (1) that the organization should not be involved in proceedings that would ordinarily come before the judge or will be regularly engaging in adversary proceedings in any court, and (2) the judge should refrain from fund-raising activities of such organization. *See Op. 90-10.* If these limitations are met, the judge may serve on the board of the mental health provider.

As a board member, the judge must be isolated from the process of debating and awarding contracts. If the judge participates in this process and a contract is then awarded to the judge's court, a clear conflict of interest would exist.

In Opinion 92-08, we approved of a judge sitting on a committee that makes recommendations for awarding grants to various programs in which a judge is a likely participant. This committee had a rule that its members could not review grant applications submitted by the courts on which they serve. Citing Canon 2, the advisory committee concluded the possibility of conflict of interest was adequately addressed with the no-participant rule.

In the situation here, if the judge could be effectively insulated from the contracting process, the judge could serve. If not, the judge should decline appointment. The same

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limitations apply to court administrators as to judges. Nothing automatically disqualifies the administrators from serving. However, the administrator should likewise be insulated from any process that might result in a contract with the administrator's court.

The Code of Conduct for Judicial Employees recently adopted by the Arizona Supreme Court deals with the extra-judicial activities of court staff. Canon 4 of the employee code prohibits only business activities or secondary employment. Serving on a nonprofit corporate board is otherwise permissible.

Issue 2

Canons 2 and 4 of the Code of Judicial Conduct relate to the activities of the judge only. Several other canons require the judge to urge compliance of the judge's family or those under his control. These provisions do not apply in this situation.

A collateral issue, not specifically addressed in the question, involves the spouse's board membership or employment. If the mental health board contracts with the court, the issue of favoritism or nepotism may surface. Canon 3C(4) requires that the judge ". . . shall avoid nepotism and favoritism." The spouse's participation on the board, when contracting with the spouse's court, raises serious concerns.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 2, 3C(4) and 4C(4) (1993).

Arizona Supreme Court, Code of Conduct for Judicial Employees, Canon 4 (July 22, 1996).

Other References

Arizona Judicial Ethics Advisory Committee, Opinions [90-10](#) (Dec. 7, 1990); [92-08](#) (June 4, 1992).